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Motion Date: April 2, 2019  
Motion Time: 10:00am

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:

Case No. 18-11224-smb

CARMEN HERNANDEZ,

CHAPTER 11

Debtor.  
-----X

**MOTION SEEKING AN ORDER PURSUANT TO  
11 U.S.C. §1112(b) DISMISSING THIS CHAPTER 11 CASE**

TO THE HONORABLE STUART M. BERNSTEIN, UNITED STATES BANKRUPTCY  
JUDGE:

Mark E. Cohen, Esq., as attorney for the Debtor, Stuart M. Bernstein (the “Debtor”) in the above captioned case, submits this Motion seeking an Order pursuant to 11 U.S.C. §1112(b) dismissing this Chapter 11 case, together with such other and further relief as the Court may deem just and proper, respectfully sets forth and represents as follows:

**Background**

1. On April 29, 2018 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the Bankruptcy Code. The Debtor is an individual who filed for Chapter 11 relief to address obligations relating to the ownership of the real estate she owns, and specifically the real properties known as and located at 2050 Watson Avenue, Bronx, New York and 1106 Pugsley Avenue, Bronx, New York. The Debtor would have filed for relief under Chapter 13, except

that the total amount of the secured debt owed by the Debtor exceeded the statutory limit set forth in 11 U.S.C. §109(e).

2. The debtor's financial problems began when certain problems with tenants arose. This resulted in a cascading inability to remain current on all her mortgage obligations, thereby resulting in certain mortgages falling into arrears and foreclosure. The debtor resolved most of her mortgage arrearages through modifications thereof, but the mortgages secured by the real property known as 2050 Watson Avenue, Bronx, New York 10472 (the "Watson Property") and 1106 Pugsley Avenue, Bronx, New York 10472 (the "Pugsley Property") remain at issue with loan modification packages being submitted to resolve these two mortgages in the same manner as the other four. Since the filing of the Petition, the Debtor has continued to manage her real property as a debtor-in-possession pursuant to Sections 1107 and 1008 of the Bankruptcy Code.

3. No trustee, examiner or Official Committee of Unsecured Creditors has been appointed in this Chapter 11 Case.

### **The Chapter 11 Case**

4. In the context of this Chapter 11 proceeding, the Debtor commenced this proceeding to stop a pending foreclosure sale against the real property known as 2050 Watson Avenue, Bronx, New York 10472 (the "Watson Property"), and with the intention to obtain modifications or otherwise settle the mortgages secured by the Watson Property and the Pugsley Property.

5. Upon the retention of Mark E. Cohen, Esq., counsel engaged with Wells Fargo Home Mortgage with regard to obtaining a modification of the mortgages secured by the

Watson Property and the Pugsley Property. Such modification applications were both denied.

6. Thereafter, the debtor inquired with various lenders as to whether she could refinance any of the other real property that she owns in order to use the equity to satisfy the mortgage arrears due on the Watson Property and/or Pugsley Property. However, in this regard the debtor was likewise unsuccessful.

7. Recently, the mortgages secured by both the Watson Property and the Pugsley Property were transferred from Wells Fargo Home Mortgage to Specialized Loan Servicing (“SLS”). To that extent, SLS has agreed to review the debtor’s mortgages for both the Watson Property and the Pugsley Property for a possible loan modification.

8. On March 1, 2019 the loan modification application for the Watson Property was submitted and on March 4, 2019 the loan modification application for the Pugsley Property was submitted.

### **Basis For The Relief Requested**

9. Section 1112(b) of the United States Bankruptcy Code provides in pertinent part that

“[o]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of the creditors and the estate . . . .”

10. In the present case, the debtor has applied for the mortgage modifications for the Watson Property and the Pugsley Property. With the debtor having exhausted all other options available at this time, these modifications will either be granted or denied. As such,

there is nothing further to be administered by the Bankruptcy Court, and therefore this motion is now being filed seeking an Order dismissing this Chapter 11 case.

11. That no previous application for the relief requested herein has heretofore been presented.

WHEREFORE, the Debtor respectfully prays that this Court enter an order pursuant to 11 U.S.C. §1112(b) dismissing this Chapter 11 case, together with such other and further relief as the Court may deem just and proper

Dated: Forest Hills, New York  
March 4, 2019

MARK E. COHEN, ESQ.  
s/Mark E. Cohen, Esq.  
Attorney for the Chapter 11 Debtor  
108-18 Queens Boulevard  
4<sup>th</sup> Floor, Suite 3  
Forest Hills, New York 11375  
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## **CERTIFICATE OF SERVICE**

I, Mark E. Cohen, certify under penalty of perjury that I am not a party to this action, am over 18 years of age.

That on March 4, 2019 I served the (i) NOTICE OF MOTION SEEKING AN ORDER PURSUANT TO 11 U.S.C. §1112(b) DISMISSING THIS CHAPTER 11 CASE and (ii) MOTION SEEKING AN ORDER PURSUANT TO 11 U.S.C. §1112(b) DISMISSING THIS CHAPTER 11 CASE with Exhibits annexed thereto by the Court's electronic filing system and regular U.S. Mail to the addresses listed below, said addresses designated for that purpose as follows.

TO: Office of the United States Trustee  
Southern District of New York  
U.S. Federal Office Building  
201 Varick Street, Suite 1006  
New York, NY 10014  
Attention: Serene K. Nakano, Esq.

Shapiro, DiCaro & Barak, LLC  
Attorneys for Secured Creditor  
U.S. Bank National Association, as Trustee for  
Banc of America Funding Corporation 2007-6  
175 Mile Crossing Boulevard  
Rochester, NY 14624

Woods Oviatt Gilman LLP  
Attorneys for Secured Creditor  
Wells Fargo Bank, N.A. as Servicing Agent for  
U.S. Bank National Association,  
as Trustee for Credit Suisse First Boston Mortgage Securities Corp.,  
SCAB Mortgage Backed Pass-Through Certificates, Series 2006-3  
700 Crossroads Building  
2 State Street  
Rochester, NY 14614

Specialized Loan Servicing, LLC  
8472 Lucent Boulevard, Suite 330  
Highland Ranch, CO 80129

Aldridge Pite LLP  
Attorney for Secured Creditor  
Metropolitan Life Insurance Company  
4375 Jutland Drive  
San Diego, CA 92117

Dated: Forest Hills, New York  
March 4, 2019

MARK E. COHEN, ESQ.  
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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:

Case No. 18-112240smb

CARMEN HERNANDEZ,

CHAPTER 11

Debtor.

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**11 U.S.C. §1112(b) DISMISSING THIS CHAPTER 11 CASE**

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